IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 276 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME TAX

Versus

GUJART CARBON PVT.LTD.

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Appearance:

1. INCOME TAX REFERENCE No. 276 of 1992

MR MR BHATT for Petitioner No. 1

MR JP SHAH for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for our opinion in respect of assessment year 1984-85:-

(i) Whether, the Appellate Tribunal is right in law and on facts in holding that the amount of Rs.77.69,521/- paid for royalties to collaborators is allowable as revenue expenditure?

(ii) Whether, the Appellate Tribunal is right in law and on facts in holding that if the unpaid sales tax liability pertaining to the last quarter if paid before the time prescribed for filing of return under section 139(1), the provisions of sec.43B cannot be invoked?"

2. We have heard Mr Manish R Bhatt, learned Sr. Standing Counsel for the revenue and Mr Manish J Shah, learned counsel for the respondent- assessee.

3. As far as the first question is concerned, our attention is invited to the decision dated 5-12-2001 of this Court in the case of this very assessee reported in (2002) 254 ITR 294 wherein this Court had an opportunity to consider the same question for the assessment year 1980-81. After considering all the relevant material and the decisions of the Apex Court, this Court answered the question in favour of the assessee and held that amount paid for royalties to collaborators is a revenue expenditure and accordingly answered the question in favour of the assessee.

Following the aforesaid decision, our answer to question No.1 is in the affirmative i.e. in favour of the assessee and against the revenue.

4. Coming to question No.2, our attention is invited to the decision of the Apex Court in Allied Motors (P) Ltd. vs. Commissioner of Income-tax, 224 ITR 677. In the said decision, the Apex Court has held that if the sales-tax liability pertaining to the last quarter of a previous year is paid after 31st March i.e. in the first quarter of the next year but before the time prescribed for filing of return under Section 139(1), it must be treated as sufficient compliance of the requirement of making payment of the tax within the previous year and, therefore, the provisions of section 43B cannot be invoked.

Following the aforesaid decision, our answer to question No.2 is in the affirmative i.e. in favour of the assessee and against the revenue.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-